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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,) No. CR 08-0272 SI
Plaintiff,) UNITED STATES' OPPOSITION TO
v.) DEFENDANT'S MOTION TO EXCLUDE
CELSO MARTEARENA-ARRIOLA,) EXPERT TESTIMONY
Defendant.) Trial Date: June 30, 2008 8:30 a.m.
) Pretrial Conference: June 24, 2008; 3:30 p.m.

INTRODUCTION

The government filed its Notice of Expert Testimony on June 13, 2008. The Defendant objected on the grounds that it was insufficiently detailed. Without agreeing with that position, the government immediately informed the Defendant that it would supplement the Notice Concurrently with this filing, the government does so. *See* Exhibit 1 (Supplemental Expert Notice, filed June 20, 2008).

In addition to being premature, the Defendant's Motion to Exclude also founders on the applicable law and facts.

UNITED STATES' OPP. TO MTN. TO EXCLUDE
CR 08-0272 SI

ARGUMENT

I. The Expert Disclosure Is Sufficient.

The June 13 Notice of Expert Testimony referenced the expert's previously-produced report (CMA0421; Defendant's Exhibit A), which listed – by exact title and date – eight sets of fingerprints that the expert had analyzed. *See* Defendant's Exhibit A (listing, e.g., "I-205, Warrant of Removal/Deportation for MARTEARENA-ARRIOLA, CELSO, A#91 761 305, executed on 4-27-05, with a fingerprint impression thereon.").¹ The report stated the expert's conclusion that all eight sets of fingerprints were made by the same individual, and the basis for that conclusion – i.e., the expert's "comparative analysis of the friction ridge detail for the fingerprint impressions in question."

The June 13 Notice further explained that his opinion that all prints were made by the same individual was based on certain fundamental principles of fingerprints (that they are unique and immutable), and his implementation of “the standard ACE-V (Analysis, Comparison, Evaluation - Verification) methodology.” Defendant’s Exhibit B at 2:11-17.

In response to the Defendant's contention that the notice was insufficiently detailed, the government immediately stated that it would supplement the original report, and has now done so. The Supplemental Expert Notice:

- Explains the standard ACE-V methodology in detail;
 - Includes a chart that graphically demonstrates the basis for the expert's opinion as to two of the eight sets of fingerprints;
 - Provides detailed bases and underlying analysis for the expert's opinion as to the unique and consistent characteristics on the eight sets of fingerprints; and

¹ This refutes the Defendant’s claim that the expert report fails to “contain a description of the various fingerprints.” Motion to Exclude at 3:5-6. The above-described 4-27-05 Warrant of Removal/Deportation – which was provided to the Defendant in discovery – contains exactly one fingerprint, described as a right index fingerprint. The Defendant has received in discovery copies of all prints analyzed by the expert, and indeed reviewed the original fingerprint impressions at the U.S. Attorney’s Office.

- 1 • Sets forth the expert's opinion that there were no unexplainable
 2 inconsistencies that undermined his opinion that the same person made all
 3 eight sets of prints.

4 See Exhibit 1.

5 If the purpose of Rule 16(a)(1)(G) is "to minimize surprise that often results from
 6 unexpected expert testimony," to obviate continuances, and to provide the opponent with a "fair
 7 opportunity" for cross-examination, *see Fed. R. Cr. P. 16, Advisory Committee Notes to 1993*
 8 Amendment, the government's supplemented expert disclosure has certainly accomplished that.
 9 Furthermore, in light of the experience of the Defendant's counsel, and the fact that analysis of
 10 known fingerprints has been a reliable and established science for "roughly a hundred years," the
 11 Defendant can hardly claim either an inability to conduct a competent cross-examination or
 12 unfair surprise from unexpected testimony. *See United States v. Calderon-Segura*, 512 F.3d
 13 1104, 1109 (9th Cir. 2008) (reliability and admissibility of inked – as opposed to latent –
 14 fingerprint analysis is "long established"; fingerprint identification methods "have been tested in
 15 the adversarial system for roughly a hundred years") (citing *United States v. Crisp*, 324 F.3d 261,
 16 266 (4th Cir. 2003)).

17 In short, the Defendant cites no authority interpreting Rule 16(a)(1)(G) to require what
 18 they appear to seek here – essentially a direct examination "script" for the government's expert.
 19 The government has complied with Rule 16(a)(1)(G), and the Defendant's motion should be
 20 denied.

21 **II. Even If the Expert Disclosure Were Insufficient, Exclusion Would Not Be the
 22 Appropriate Remedy.**

23 Even if the government's fulsome expert disclosure did fail to comply with Rule 16, "[a]
 24 violation of Rule 16 does not itself require . . . exclusion of the affected testimony." *United*
 25 *States v. Mendoza-Paz*, 286 F.3d 1104, 1111 (9th Cir. 2002). In *Mendoza-Paz*, the defendant
 26 claimed that the government had failed to provide sufficient expert notices under Rule 16. One
 27 government expert notice consisted of a "two-page letter designating the expert and summarizing
 28 the scope and bases for his testimony." *Id.* at 1108. In response to the defendant's assertions of

1 inadequacy, the district court ordered the government to supplement its disclosures (requiring
2 one expert to produce reports on which he relied in rendering his opinion as to the value of
3 imported marijuana, and requiring an expert chemist to provide the underlying tests he had
4 conducted on the narcotics) – which the government did, as late as the first day of trial. *Id.* at
5 1108. The district court found that the supplemented disclosures were sufficient, and the Ninth
6 Circuit affirmed, finding that “the government’s disclosures in fact provided Mendoza-Paz ‘with
7 a fair opportunity to test the merit of the expert’s testimony through focused cross-examination.’”
8 *Id.* at 1111 (quoting Fed. R. Crim. P. 16, 1993 Advisory Committee Note).

9 Accordingly, even if the government’s expert disclosure regarding the fingerprints
10 analysis were insufficient under Rule 16, the appropriate remedy would be to order
11 supplementation of that disclosure, not exclusion of the testimony.

12 **CONCLUSION**

13 For the foregoing reasons, the Government respectfully requests that the Defendant’s
14 Motion to Exclude be denied.

15
16 DATED: June 20, 2008

Respectfully submitted,
JOSEPH P. RUSSONIELLO
United States Attorney

17
18
19 _____/s/
20 TRACIE L. BROWN
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EXHIBIT 1

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Pursuant to Rule 16(a)(1)(G), the government here supplements its previously-filed Notice of Expert Testimony relating to the proposed testimony of Kenneth Woods, Senior Fingerprint Specialist with the U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), at the Forensic Document Laboratory (FDL) in McLean, Virginia.

I. BACKGROUND.

The FDL is accredited by the American Society of Crime Laboratory Directors / Laboratory Accreditation Board (ASCLD/LAB). As a Senior Fingerprint Specialist at the FDL, Mr. Woods' duties and responsibilities include, but are not limited to, processing evidence

1 collected at crime scenes, conducting friction ridge analysis, comparison, and evaluation of
2 fingerprints submitted for analysis to the Forensic Document Laboratory, as well as entering
3 fingerprints into the FBI's IAFIS (Integrated Automated Fingerprint Identification System)
4 system and ICE's CAFIS (Cogent Automated Fingerprint Identification System). Mr. Woods has
5 the education, training, and experience required to conduct such analysis, as outlined in the
6 previously-provided curriculum vitae.

7 On April 22, 2008, Mr. Woods analyzed the eight (8) Exhibits containing inked or known
8 impressions, submitted by ICE Deportation Officer Cesar J. Lopez to the FDL. The Exhibits
9 consisted of five Warrants of Removal/Deportation (Form I-205), and three (3) standard
10 fingerprint cards (Form FD-249), and are described in more detail on the report dated April 22,
11 2008 (attached as Exhibit A to Defendant's Motion to Exclude). After an analysis, comparison
12 and evaluation of the friction ridge detail on the items, Mr. Woods determined that all of the
13 fingerprint impressions were made by the same individual.

14 **II. BASIS FOR OPINION.**

15 **A. Methodology.**

16 Mr. Woods' opinion that all of the fingerprint impressions were made by the same
17 individual is based on the two fundamental principles of friction ridge identification: (1) friction
18 ridges present in fingerprints begin to develop in the fetus and persist, unchanged, until after
19 death when decomposition destroys the ridged skin; (2) no two fingerprints have been found to
20 be the same, even in identical twins. His conclusions were reached using the standard ACE-V
21 (Analysis, Comparison, Evaluation – Verification) methodology. The methodology is further
22 broken down as follows:

23 The Analysis phase is used to make observations and to study each of the impressions.
24 This includes how the impression was processed or made; whether it was an inked or a live
25 scanned impression; the surface it was deposited on; the general flow of ridges; clarity of the
26 ridges; ridge characteristics present; and any apparent movement or distortion. The examiner
27 then determines if the impression contains sufficient information to move on to the comparison
28 phase. The impressions submitted were determined to be sufficient for comparison.

1 The Comparison phase begins when two or more impressions have been determined to be
2 of value for comparison. The impressions are compared in a side by side format to determine if
3 the same ridge formations and ridge characteristics occupy the same relative position in both.
4 Additionally, the impressions are compared for unexplainable dissimilarities. If the impressions
5 meet the comparison criteria then the Evaluation phase is initiated. Mr. Woods compared the
6 impressions submitted by Deportation Officer Cesar Lopez, and found the ridge formations and
7 characteristics to be in the same relative position with no unexplainable dissimilarities.

8 The Evaluation phase is where the examiner makes a determination as to the
9 individualization, exclusion, or inconclusive status of the examination. Any individualizations
10 are then sent to an additional examiner for verification. As previously stated, Mr. Woods
11 determined that the fingerprint impressions submitted to him were made by the same individual;
12 the impressions were then forwarded to Senior Fingerprint Specialist Genius Johnson for
13 verification.

14 In the Verification phase a second examiner is responsible for following the ACE
15 methodology as outlined above in order to provide a quality assurance measure. Senior
16 Fingerprint Specialist Johnson verified the examination and concurred with Mr. Woods'
17 conclusion that all fingerprints were made by the same person.

18 **B. Findings.**

19 As stated above, Mr. Woods analyzed the eight (8) exhibits containing inked or known
20 impressions, submitted by ICE Deportation Officer Lopez to the FDL. Attached hereto as
21 Exhibit A is a chart that is a pictorial representation of the comparison between the known
22 impressions on Exhibits 1.4 (I-205 Warrant of Deportation dated 11/14/95) and 1.6 (FDL-249
23 Fingerprint Card dated 4/7/08). *See Exhibit A.*

24 Exhibit 1.4 bears a known fingerprint impression that is of good to moderate quality for
25 comparison. The pattern and ridge flow are discernable as a right sloping loop. The core area
26 and many of the ridges and ridge details are very clear. Some areas are smudged or unclear due
27 to conditions at the time the impression was taken.

28 Exhibit 1.6 bears several known impressions that are of good to very good quality for

1 comparison. The impression in the block marked 1.R. THUMB is consistent in pattern and ridge
2 flow with the right sloping loop in Exhibit 1.4. The ridges and ridge details are very clear, and
3 while the ridges do fade around the outer edges of the impression, this does not interfere with the
4 analysis.

5 Due to the level of ridge clarity and detail, both of the known impressions in Exhibits 1.4
6 and 1.6 were determined to be of sufficient quality for comparison.

7 A side by side comparison was conducted to determine if the known impressions were
8 made by the same finger. There is specific agreement between the impressions as to pattern and
9 ridge flow. Upon comparing the individual ridges present in the impressions, several areas
10 displayed ridge characteristics that are in the same unit relationship between the two impressions.
11 These areas of agreement are represented in the chart and occur throughout the impressions. The
12 first area (the lowest set of small circles) is to the left side of the impressions near the delta area.
13 The enlarged area displays an ending ridge and a bifurcation. The second set of circles highlight
14 the ridge to the left of the core. The ridge contains four bifurcations presented as two enclosures.
15 The third set of circles display the top of the core and a bifurcation opening up and to the right in
16 both impressions. The top set of circles are representative of an ending ridge and a downward
17 opening bifurcation that are above the core. The selected ridge details described are a
18 representative sample of the ridges and ridge details on which Mr. Woods' ultimate conclusion
19 was based.

20 The evaluation of the impressions described above resulted in the determination that both
21 of the impressions were made by the same individual. While the areas recorded on the remaining
22 impressions – Exhibits 1.1 (I-205 Warrant of Removal/Deportation dated 4/27/05), 1.2 (I-205
23 Warrant of Removal/Deportation dated 6/21/01), 1.3 (I-205 Warrant of Removal/Deportation
24 dated 8/7/98), 1.5 (I-205 Warrant of Deportation dated 11/29/94), 1.7 (FD-249 Fingerprint Card
25 dated 2/20/01), and 1.8 (FD-249 Fingerprint Card dated 11/14/95) – are in some cases different
26 fingers, the same procedure or methodology was followed in the Analysis, Comparison, and
27 Evaluation of these Exhibits. All impressions contained areas of sufficient clarity and ridge
28 detail to allow the ACE methodology to be followed. Exhibits 1.1, 1.2, and 1.3 all contain right

1 index fingerprint impressions. The pattern, ridge flow, and ridge characteristics on those
2 impressions are consistent with each other, and consistent with the right index fingerprints
3 contained on Exhibits 1.6, 1.7, and 1.8. For example, below the core of the impressions there is a
4 bifurcation present that opens to the left, travels a short distance and merges or joins the ridge
5 above. Two ridges below the first bifurcation is a second bifurcation that also opens to the left.

6 Likewise, the right thumbprint contained on Exhibit 1.5 is consistent with the pattern,
7 ridge flow, and ridge characteristics on the right thumbprints contained on Exhibits 1.4, 1.6, 1.7,
8 and 1.8. For example, the previously mentioned core, with the bifurcation that opens to the right
9 in the ridge immediately above the core, is present in all of the right thumb impressions.
10 Additionally the double enclosure in the ridge to the left of the core is also present in all of the
11 right thumb impressions.

12 Thus, based on these and other consistencies (as well as the corresponding lack of
13 unexplainable inconsistencies) among the fingerprint impressions, Mr. Woods concluded (and
14 Mr. Johnson verified) that all of the impressions were made by one and the same individual.

15
16 DATED: June 20, 2008

Respectfully submitted,

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18 United States Attorney

19 _____/s/
20 TRACIE L. BROWN
21 Assistant United States Attorney

EXHIBIT A

I-205 exhibit 1.4



FD-249 exhibit 1.6



FDL 08-04491

